

**PROBATIONARY
CONSENT AGREEMENT
BETWEEN
ROBERT MALCOLM BENSON, M.D.
AND
THE STATE MEDICAL BOARD OF OHIO**

This Consent Agreement is entered into by and between Robert Malcolm Benson, M.D. [Dr. Benson], and the State Medical Board of Ohio [Board], a state agency charged with enforcing Chapter 4731., Ohio Revised Code.

Dr. Benson enters into this Consent Agreement being fully informed of his rights under Chapter 119., Ohio Revised Code, including the right to representation by counsel and the right to a formal adjudicative hearing on the issues considered herein.

BASIS FOR ACTION

This Consent Agreement is entered into on the basis of the following stipulations, admissions and understandings:

- A. The Board is empowered by Section 4731.22(B)(19), Ohio Revised Code, to limit, revoke, suspend a certificate, refuse to register or reinstate an applicant, or reprimand or place on probation the holder of a certificate for an “[i]nability to practice according to acceptable and prevailing standards of care by reason of mental illness or physical illness, including, but not limited to, physical deterioration that adversely affects cognitive, motor, or perceptive skills.”
- B. The Board enters into this Consent Agreement in lieu of formal proceedings based upon the violations of Section 4731.22(B)(19), Ohio Revised Code, as set forth in Paragraph E below, and expressly reserves the right to institute formal proceedings based upon any other violations of Chapter 4731. of the Revised Code, whether occurring before or after the effective date of this Consent Agreement.
- C. Dr. Benson is licensed to practice medicine and surgery in the State of Ohio, License # 35-037331.
- D. Dr. Benson states that he is not licensed to practice medicine and surgery in any other state or jurisdiction.
- E. Dr. Benson admits that he has been under the care of a psychiatrist since during or about 1994 through the present, and that his treating psychiatrist’s diagnostic impressions of Dr. Benson have included bipolar disorder, bipolar depression, and defensive narcissism.

Dr. Benson further admits that during or about May 2000, he was evaluated by Steven Levine, M.D., Stanley Althof, Ph.D., and other mental health care professionals affiliated with The Center for Marital & Sexual Health in Beachwood, Ohio, and that such evaluation resulted in a determination that Dr. Benson has the diagnoses of cyclothymic disorder and mixed personality disorder. Dr. Benson further admits that such evaluation opined that Dr. Benson had engaged in frequent boundary crossings and infrequent but recurrent boundary violations, and that he had poor social judgment associated with imbedded limiting character traits. Dr. Benson admits that examples of the types of behavior leading to such evaluation included Dr. Benson resigning his hospital staff privileges at Akron Children's Hospital in Akron, Ohio, after it was alleged that during or about May 1997, he kissed a seventeen-year-old pediatric endocrinology patient at that facility; and his acts occurring at Aultman Hospital, in Canton, Ohio, during or about May 1997 through May 2000, related to his hugging and kissing a patient's mother without consent, playing off-color comedy recordings in his medical office, and repeatedly making socially inappropriate remarks to patients, their family members, and hospital staff, which resulted in Dr. Benson entering into an Agreement to Participate in Voluntary Remediation with that facility on or about July 12, 2000. Dr. Benson further admits that the aforementioned evaluation by The Center for Marital & Sexual Health resulted in certain recommendations, including that he be reassessed in one year and that, in the interim, he be accompanied by a chaperone when seeing patients, undertake psychiatric therapy including medication management, and complete a tutorial regarding boundaries within medical practice.

Dr. Benson further admits that during or about June 2001, he underwent a follow-up assessment at The Center for Marital & Sexual Health, which resulted in certain recommendations including that in the future Dr. Benson continue to be accompanied by a chaperone when seeing patients, and that he maintain ongoing therapy with a psychiatrist at least monthly including medication management.

AGREED CONDITIONS

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any formal proceedings at this time, Dr. Benson knowingly and voluntarily agrees with the Board to the following terms, conditions and limitations:

PERMANENT LICENSURE LIMITATION:

1. Dr. Benson's certificate to practice medicine and surgery in Ohio shall be **PERMANENTLY LIMITED AND RESTRICTED** as follows:

Dr. Benson shall be continuously accompanied by a chaperone at all times when interacting with a patient and/or a patient's family

member(s) for any purpose at any location, except in the case of a life-threatening emergency wherein Dr. Benson shall be accompanied by a chaperone as soon as reasonably practicable.

PROBATIONARY TERMS AND CONDITIONS:

2. Dr. Benson shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.
3. Dr. Benson shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of this Consent Agreement. The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which this Consent Agreement becomes effective. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
4. Dr. Benson shall appear in person for an interview before the full Board or its designated representative during the third month following the effective date of this Consent Agreement. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.
5. In the event that Dr. Benson should leave Ohio for three continuous months, or reside or practice outside the State, Dr. Benson must notify the Board in writing of the dates of departure and return. Periods of time spent outside Ohio will not apply to the reduction of this period under this Consent Agreement, unless otherwise determined by motion of the Board in instances where the Board can be assured that probationary monitoring is otherwise being performed.
6. In the event Dr. Benson is found by the Secretary of the Board to have failed to comply with any provision of this Consent Agreement, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period under this Consent Agreement.

Psychiatric Treatment

7. Within thirty days of the effective date of this Consent Agreement, Dr. Benson shall submit to the Board for its prior approval the names and qualifications of a psychiatrist of his choice. Upon approval by the Board, Dr. Benson shall undergo and continue psychiatric treatment no less than once every four weeks, or as otherwise directed by the Board. Dr. Benson shall comply with his psychiatric treatment plan, including taking medications as prescribed and/or ordered for his psychiatric disorder.

Within thirty days of the effective date of this Consent Agreement, Dr. Benson shall provide his approved treating psychiatrist with a copy of this Consent Agreement.

Dr. Benson shall submit to blood testing, at his expense and as directed by his treating psychiatrist or the Board, for levels of any medication that is prescribed for his psychiatric disorder. The specimen for the medication levels must be obtained by or under the direction and supervision of Dr. Benson's treating psychiatrist or another physician approved in advance by the Board.

Dr. Benson shall ensure that reports are forwarded by his treating psychiatrist to the Board on a quarterly basis, or as otherwise directed by the Board. These reports shall contain information describing Dr. Benson's current treatment plan and any changes that have been made to the treatment plan since the prior report; Dr. Benson's compliance with his treatment plan; Dr. Benson's mental status; Dr. Benson's progress in treatment; and results of any laboratory studies that have been conducted since the prior report. Dr. Benson shall ensure that his treating psychiatrist immediately notify the Board of his failure to comply with his psychiatric treatment plan and/or counseling and/or any determination that Dr. Benson is unable to practice due to his psychiatric disorder. It is Dr. Benson's responsibility to ensure that quarterly reports are received in the Board's offices no later than the due date for Dr. Benson's quarterly declaration.

Releases

8. Dr. Benson shall provide continuing authorization, through appropriate written consent forms, for disclosure by his treatment providers to the Board, to treating and monitoring physicians, and to others involved in the monitoring process, of information necessary for them to fulfill their respective duties and obligations.

Required Reporting by Licensee

9. Within thirty days of the effective date of this Consent Agreement, Dr. Benson shall provide a copy of this Consent Agreement to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Benson shall provide a copy of this Consent Agreement to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.
10. Within thirty days of the effective date of this Consent Agreement, Dr. Benson shall provide a copy of this Consent Agreement by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. Benson further agrees to provide a copy of this

Consent Agreement by certified mail, return receipt requested, at time of application to the proper licensing authority of any state in which he applies for any professional license or for reinstatement of any professional license. Further, Dr. Benson shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.

FAILURE TO COMPLY

If, in the discretion of the Secretary and Supervising Member of the Board, Dr. Benson appears to have violated or breached any term or condition of this Consent Agreement, the Board reserves the right to institute formal disciplinary proceedings for any and all possible violations or breaches, including, but not limited to, alleged violations of the laws of Ohio occurring before the effective date of this Consent Agreement.

If the Secretary and Supervising Member of the Board determine that there is clear and convincing evidence that Dr. Benson has violated any term, condition or limitation of this Consent Agreement, Dr. Benson agrees that the violation, as alleged, also constitutes clear and convincing evidence that his continued practice presents a danger of immediate and serious harm to the public for purposes of initiating a summary suspension pursuant to Section 4731.22(G), Ohio Revised Code.

DURATION/MODIFICATION OF TERMS

Dr. Benson shall not request termination of his probationary status, as established by this Consent Agreement, for a minimum of five years. In addition, Dr. Benson shall not request modification to the probationary terms, limitations, and conditions contained herein for at least one year. Otherwise, with the exception of the permanent licensure limitation specified in paragraph 1 above, the above-described terms, limitations and conditions may be amended or terminated in writing at any time upon the agreement of both parties.

Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Benson's certificate will be restored, but shall thereafter be PERMANENTLY LIMITED AND RESTRICTED as specified in paragraph 1 above.

ACKNOWLEDGMENTS/LIABILITY RELEASE

Dr. Benson acknowledges that he has had an opportunity to ask questions concerning the terms of this Consent Agreement and that all questions asked have been answered in a satisfactory manner.

Any action initiated by the Board based on alleged violations of this Consent Agreement shall comply with the Administrative Procedure Act, Chapter 119., Ohio Revised Code.

Dr. Benson hereby releases the Board, its members, employees, agents, officers and

representatives jointly and severally from any and all liability arising from the within matter.

This Consent Agreement shall be considered a public record as that term is used in Section 149.43, Ohio Revised Code, and may be reported to appropriate organizations, data banks, and governmental bodies. Dr. Benson agrees to provide his social security number to the Board and hereby authorizes the Board to utilize that number in conjunction with that reporting.

EFFECTIVE DATE

It is expressly understood that this Consent Agreement is subject to ratification by the Board prior to signature by the Secretary and Supervising Member and shall become effective upon the last date of signature below.

Robert M. Benson MD
ROBERT MALCOLM BENSON, M.D.

Lance A. Talmage MD
LANCE A. TALMAGE, M.D.
Secretary

7-19-03
DATE

8-13-03
DATE

Glennon J. Karr, Esq. by authority Rebecca J. Marshall, Esq.
GLENNON J. KARR, Attorney for
07/31/03 Dr. Benson

Raymond J. Albert
RAYMOND J. ALBERT
Supervising Member

DATE

8/13/03
DATE

Rebecca J. Marshall, Esq.
REBECCA J. MARSHALL, ESQ.
Enforcement Coordinator

07/31/03
DATE